

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

Blue Cross and Blue Shield of Vermont)	GMCB-001-23rr
2023 Large Group Filing)	SERFF: BCVT-133551255
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OFFICE OF THE HEALTH CARE ADVOCATE
MEMORANDUM IN LIEU OF HEARING

The Office of the Health Care Advocate (HCA) submits this memorandum in lieu of hearing to the Green Mountain Care Board (GMCB) in response to Blue Cross and Blue Shield of Vermont’s (BCBSVT) 2024 Large Group rate filing. BCBSVT proposes a 10.8% increase to the manual rating methodology for its Vermont large group book of business which currently has 3,270 subscribers and 5,785 covered lives. The actual rate increase or decrease that Vermonters would experience would vary based on their group’s recent experience, changes in membership, and changes in benefits.¹

BCBSVT does not offer the evidence required to justify the proposed rate change. Consistent with prior practice, BCBSVT offers only actuarial and financial evidence to justify the proposed rate. However, in addition to actuarial soundness, the Board must evaluate whether BCBSVT’s rate request is affordable, promotes access to care, and promotes quality care. BCBSVT bears the burden to justify the rate request. Having addressed only a subset of the rate review factors, BCBSVT has failed to meet its burden. Therefore, the HCA respectfully requests the Board to find that BCBSVT has failed to justify the proposed 10.8% rate increase.

¹ GMCB-001-23rr, Lewis & Ellis Actuarial Mem. at 1.

I. BCBSVT BEARS THE BURDEN TO JUSTIFY ITS PROPOSED PREMIUM INCREASE.

Prior to selling a major commercial health insurance policy in Vermont, a health insurer must submit the proposed premium change to the GMCB for review.² The health insurance company “bear[s] the burden to justify the rate request.”³ What this “burden to justify” means in practice is not defined by statute or by Board rule.

When the legislature and agency rules are silent on the degree of proof required in an administrative proceeding, it is appropriate to look to the courts for a standard.⁴ The Vermont Supreme Court notes that a “preponderance of the evidence is the usual standard of proof in state administrative” proceedings.⁵ Therefore, to meet its burden and justify approval of a proposed rate as filed, a health insurance company must establish by a preponderance of the evidence facts connected to the rate review criteria.

The rate review criteria are an assortment of factors, often in tension, which the Board must balance and the carrier must prove.⁶ They include statutory factors—that the rate “is affordable, promotes quality care, promotes access to health care, protects insurer solvency, and is not unjust, unfair, inequitable, misleading, or contrary to the laws of” Vermont.⁷ And they include actuarial factors—that the proposed rate is not “excessive, inadequate, or unfairly discriminatory.”⁸ To justify the rate request, an insurer must offer evidence regarding the factors

² 8 V.S.A. 4062(a).

³ Code Vt. R. 80-280-002, 2.104(c).

⁴ E.g., In re Smith, 169 Vt. 162, 169 (1999).

⁵ Id.

⁶ E.g., GMCB-009-18rr, Decision and Order at 17.

⁷ 8 V.S.A. 4062(a)(2)(A).

⁸ Code Vt. R. 80-280-002, 2.301(b).

and prove the factors, by a preponderance of the evidence⁹, that a balancing of the factors weighs in favor of the Board approving the rate.

The Board examines the sufficiency of the evidence presented, engages in a balancing test, and ultimately determines the rate. To bolster against possible appeal of a rate decision, the Board must adequately explain its reasoning for any modification in a written decision.¹⁰ This process of examining, balancing, and explaining in writing is hampered when an insurer does little more than file an actuarial memorandum—which speaks to only a subset of the rate review criteria—to justify the rate. As the Board has acknowledged, the review criteria must be viewed holistically and it “cannot view one [factor] in isolation, without regard for the others.”¹¹ Thus, when a carrier offers little or no evidence on a review factor, it hinders the Board from fully evaluating the proposed premium price change and from explaining its reasoning regarding any adjustment to the proposed rate. In such instances, the Board should find that the carrier has failed to justify the rate.

II. BCBSVT’S EVIDENCE DOES NOT JUSTIFY THE PROPOSED INCREASE.

BCBSVT only offered evidence that the proposed 10.8% rate increase protects insurer solvency and is not excessive, inadequate, or unfairly discriminatory. It failed to offer any evidence, let alone sufficient evidence, to meet its burden to prove that the proposed 10.8% rate increase satisfies the enumerated factors in 8 V.S.A. § 4062. The record contains no evidence that the proposed rate is affordable or promotes access to health care, and only an oblique reference that it promotes quality care. This lack of evidence addressing the statutory factors

⁹ Additional sources of evidence in rate review proceedings include the Department of Financial Regulation’s solvency opinion, the analysis of Board’s actuary, and evidence offered by the HCA.

¹⁰ In re MVP Health Insurance Co., 2016 VT 111, ¶¶ 18–24.

¹¹ GMCB-009-18rr, Decision and Order at 17.

should be a fatal flaw. Vermont law requires BCBSVT to do more to justify its proposed rate increase.¹²

A. BCBSVT has not demonstrated that the proposed increase is affordable to Vermonters.

The proposed rate increase will be borne by Vermonters and Vermont businesses who were already struggling to afford health insurance premiums before the severe inflationary pressures of the past year. Fifty-one percent of uninsured Vermonters report that cost is “absolutely the only reason” for not purchasing health insurance.¹³ “Seventy-six percent [of Vermonters] with access to [employer sponsored insurance (ESI)] have not enrolled in their employer’s plan due to cost.”¹⁴ A 10.8% premium increase will only make this product less affordable to Vermonters and Vermont businesses.

BCBSVT’s actuarial memorandum lacks any discussion or analysis of how the proposed rate increase will impact Vermonters and Vermont businesses. Rather, it only includes actuarial justifications of the proposed manual rating formula. At best, this justification captures half of the affordability equation—the relationship of price relative to production cost. Such an analysis, however, fails to account for consumer affordability or put differently, the relationship of price and demand.

Regardless, Vermont law requires entities such as BCBSVT to justify that the proposed rate change is affordable, and Board precedent has consistently reinforced this requirement in addition to acknowledging tensions within the concept of affordability itself and between consumer affordability and other rate review factors. Despite these facts, BCBSVT has again

¹² 8 V.S.A § 4062(a)(3); GMCB Rule 2.000 § 2.401.

¹³ VT Dept. of Health, VERMONT HOUSEHOLD HEALTH INSURANCE SURVEY 2021, 35 (2022), <https://www.healthvermont.gov/sites/default/files/documents/pdf/HSVR-VHHIS-2021-Report.pdf>.

¹⁴ Id. at 31.

chosen to act as if the affordability prong relates solely to price relative to production cost. Silence is not a valid means of justification, and a lack of any analysis is not reasonable.

In sum, BCBSVT failed to offer *any* evidence that the proposed rate increase is affordable for consumers or that BCBSVT attempted a balancing of the tensions inherent in the concept of affordability as contained in § 4062.

B. BCBSVT has not demonstrated that the proposed increase promotes access to care.

One of the fundamental components of access to care is Vermonters' ability to pay for needed care.¹⁵ Vermonters already struggled to access care due to cost before the Covid-19 crisis and the emergence of current inflationary pressures. Vermont businesses are also challenged by premium cost growth. Businesses respond to increased health insurance costs by either reducing benefits or decreasing real wages.¹⁶

The proposed rate increase would reduce access to care in either case. If a business reduces real wages, workers are less able to afford care. On the other hand, if a business reduces health benefits, this results in more Vermonters being underinsured. Underinsured Vermonters with ESI, delay seeking care at a significantly higher rate than Vermonters with adequate insurance.¹⁷ Thus, access to care is also reduced by employers reducing health insurance benefits.

¹⁵ E.g., Ronald Andersen, Pamela Davidson, & Sebastian Baumeister, CHANGING THE US HEALTH CARE SYSTEM: KEY ISSUES IN HEALTH SERVICES POLICY AND MANAGEMENT 39 (Gerald Kominski ed., 2014); VT Dept. of Health, supra, at 57.

¹⁶ E.g., Neeraj Sood, & Arleen Leibowitz, Wage and Benefit Changes in Response to Rising Health Insurance Costs, National Bureau of Economic Research Working Paper No. 11063, <https://papers.nber.org/papers/w11063> (2005); Katherine Back & Amitabh Chandra, The Labor Market Effects of Rising Health Insurance Premiums, J. Labor Economics, 24(3), https://www.nber.org/system/files/working_papers/w11160/w11160.pdf (2006).

¹⁷ Vt. Dep't of Health, supra, at 29-30; Liz Hamel, Cailey Munana, & Mollyann Brodie, Kaiser Family Found./LA Times Survey of Adults with Employer-Sponsored Insurance, <https://www.kff.org/private-insurance/report/kaiser-family-foundation-la-times-survey-of-adults->

BCBSVT failed to offer any evidence how the proposed 10.8% increase promotes access to care. It is our understanding that the federal government and the Vermont Department of Financial Regulation (DFR) ensures health insurance products meet minimum network adequacy standards. We are unable to find such evidence in the record nor are we aware of any motions for the Board to take administrative notice that BCBSVT meets such standards.

However, such evidence, assuming it was in the record, which it is not, speaks to only half of the concept of access to care. Network adequacy is a necessary component of access to care, but it is not sufficient. A provider network can be massive, but if no subscriber can afford to access it, the size of the provider network is irrelevant. In short, network adequacy must be balanced with whether Vermonters can afford to use the network.

BCBSVT's failure to offer *any* evidence that the proposed rate increase would "promote access to care" from the perspective of consumer use is fatal to the proposed rate given BCBSVT's burden of proof.

C. BCBSVT has not demonstrated that the proposed rate promotes quality of care.

BCBSVT has not demonstrated that the proposed rate promotes quality of care. In a paragraph about payment reform initiatives, BCBSVT references the creation of a new care model that is intended to improve quality of care for its members. But BCBSVT's statement of their intention to improve quality is not the same as an actual demonstration with evidence that its proposed rate promotes quality care. BCBSVT's failure to offer sufficient evidence that the

with-employer-sponsored-insurance/ (2019) (documenting that 40% of persons with employer coverage report problems paying medical bill or difficulty affording their premiums. 51% of respondents reported that they or someone in their family have skipped or postponed needed care or medications or relied on home remedies instead of seeking care because of cost).

proposed rate increase would “promote quality of care” is another indicator that it has failed overall to justify the proposed 10.8% manual rate increase.

III. CONCLUSION

BCBSVT has not demonstrated that the proposed rate is affordable, promotes access to care, or promotes quality care. The proposed 10.8% manual rate increase will only exacerbate Vermonters’ well known health care affordability struggles, which only continue to worsen with each successive rate increase. We urge the Board to find that BCBSVT has failed to justify the rate request.

Dated at Montpelier, Vermont this 18th Day of April, 2023.

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CERTIFICATE OF SERVICE

I, Eric Schultheis, hereby certify that I have served the above Memorandum In Lieu Of Hearing on Michael Barber, Green Mountain Care Board General Counsel, Laura Beliveau, Green Mountain Care Board Staff Attorney, and Gregory Boulbol, counsel for Blue Cross Blue Shield of Vermont, by electronic mail, delivery receipt requested, this 18th day of April, 2022.

/s/ Eric Schultheis

Eric Schultheis, Ph.D., Esq.

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